Original

SIDLEY & AUSTIN
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1722 EYE STREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONE 202 736 8000
FACSIMILE 202 736 8711

FOUNDED 1866

CHICAGO
DALLAS
LOS ANGELES

NEW YORK
LONDON
SINGAPORE
TOKYO

WRITER'S DIRECT NUMBER
(202) 736-8224

November 23, 1998

RECEIVED

NOV 23 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, DC 20554

Re: GTE Corp. and Bell Atlantic Corp. CC Docket 98-184

Dear Ms. Salas:

Enclosed please find an original plus 12 copies of the Petition of AT&T Corp. to Deny Application in the above captioned docket. Also enclosed is a copy to be date stamped and returned with the messenger. Please contact undersigned if you have any questions concerning this matter.

Sincerely yours,

C. Frederick Beckner III

Enclosure

No. of Copies rec'd 0+9
List ABCDE

Before the
Federal Communications Commission
Washington, DC 20554

RECEIVED

NOV 23 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter	)	
	)	
GTE CORP.	)	
	)	
Transferor,	)	
	)	
and	)	CC Docket No. 98-184
	)	
BELL ATLANTIC CORP.	)	
	)	
Transferee,	)	
	)	
For Consent to Transfer of Control	)	

PETITION OF AT&T CORP. TO DENY APPLICATION

Mark C. Rosenblum
Aryeh S. Friedman
295 North Maple Ave.
Basking Ridge, NJ 07920
(908) 221-2717

David W. Carpenter
Peter D. Keisler
C. Frederick Beckner III
Michael J. Hunseder
SIDLEY & AUSTIN
Chicago, IL 60604
(312) 853-7237

Attorneys for AT&T Corp.

November 23, 1998

TABLE OF CONTENTS

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter	)	
	)	
GTE CORP.	)	
	)	
Transferor,	)	
	)	
and	)	CC Docket 98-184
	)	
BELL ATLANTIC CORP.	)	
	)	
Transferee,	)	
	)	
For Consent to Transfer of Control	)	

PETITION OF AT&T CORP. TO DENY APPLICATION

Pursuant to the Public Notice issued by the Commission on October 8, 1998, AT&T Corp. ("AT&T") respectfully submits this petition to deny the joint Application of Bell Atlantic Corp. ("Bell Atlantic") and GTE Corp. ("GTE") (collectively "Applicants") for authority to transfer control of GTE's licenses to Bell Atlantic.

INTRODUCTION AND SUMMARY

As the three-year anniversary of the 1996 Telecommunications Act ("the Act") approaches, it remains painfully clear that the Act's central objective of meaningful local exchange competition and choice for customers has not remotely been realized, and that the campaigns of massive resistance waged by Applicants, along with the other large incumbent local exchange carriers ("LECs"), are the reason. The pending LEC mergers, if approved, would make the Act's objective even more difficult to achieve. When there were eight large incumbent LECs—seven Regional Bell Operating Companies ("RBOCs") and GTE—new entrants faced significant barriers to competing successfully in the local market. These latest mergers, by giving the combined entities even greater pools of access and other monopoly profits from which to entrench their bottleneck monopolies, by increasing even further the incumbent LECs' incentives and abilities to preserve those monopolies in order to justify these massive investments, and by establishing a market structure in which the nation's access lines may be largely divided between, in effect, a Bell East and a Bell West, would strengthen those barriers even more.

To obtain approval of these transfers of control, Bell Atlantic and GTE must show that their merger would serve the public interest by *enhancing* competition. As discussed in detail in Section I, this transaction would accomplish precisely the opposite. It would enhance the Applicants' incentives and abilities to exclude local competitors by discriminating against them. It would eliminate one of the most likely near-term entrants into each Applicant's territories: the other Applicant. It would further make maintenance of the *status quo*, in which no RBOC competes with another in their home markets, even more likely. And while increasing Applicants' ability to further entrench their local monopolies, the merger would make it far more difficult for the Commission to detect such market power abuses because it would eliminate the independent decisionmaking between two of the largest incumbent LECs that serves as a source of benchmarks. In these and other ways, it would make it significantly more difficult, if not impossible, for the pro-competition and pro-consumer goals of the Act to be realized, and for the Commission to carry out its regulatory responsibilities and continue to address the enormous challenge of opening these historically closed markets.

Further, as explained in Section II, the merger would squarely violate Section 271 of the Act, 47 U.S.C. § 271, by transferring to Bell Atlantic all of GTE's long-distance and Internet backbone operations, both of which provide interLATA services originating in Bell Atlantic's region. Remarkably, Applicants confine their discussion of this dispositive problem to a two-sentence footnote, in which they state only that (a) they "hope[]" that Bell Atlantic will receive Section 271 authorizations in all the necessary States prior to consummation of this acquisition, and (b) if Bell Atlantic does not do so, it will ask the Commission for "transitional" relief from Section 271. But there is no factual basis for Applicants' "hope," and no legal basis for such transitional relief.

The fact that the merger would violate Section 271 means that no examination of alleged pro-competitive benefits is necessary; the Commission could not approve an unlawful merger even if it found other benefits would be obtained. And even apart from this dispositive deficiency, the overwhelming evidence that the merger will allow Applicants to further entrench their local monopolies would render their claims regarding the putative public interest benefits arising from the merger, even if true, wholly insufficient to render the merger in the public interest.

In all events, however, each of Applicants' claims of countervailing public interest benefits is either contrived, trivial, or both. The centerpiece of those claims—Bell Atlantic's purported "commitment" to enter out-of-region local markets—is particularly hollow. This merger will retard, not advance, LEC out-of-region entry because it nullifies the Applicants' specific prior plans and efforts to compete in one another's regions. By contrast, Bell Atlantic and GTE have couched their Application in language specifically designed to avoid any obligation to enter other out-of-region markets should the merger be approved. And in any case, these claimed benefits could be obtained even if Applicants maintained their separate identities, and thus can have no bearing on whether the merger should be approved. *See* Section III.

Applicants' discussion of these issues reveals that they will literally say anything to gain its approval. For example, Applicants claim that the proposed merger is pro-competitive because GTE has "proximate" facilities in the suburbs of major markets like Los Angeles, Dallas, Tampa and Seattle that would "enable" entry into those markets by the combined entity. Yet Applicants simultaneously claim that GTE could not economically enter major Bell Atlantic markets like Pittsburgh, Pennsylvania, Richmond, Virginia, and Washington, D.C., even though GTE controls extensive network facilities that are just as close to these cities as GTE's facilities are to Los Angeles, Dallas, Tampa and Seattle. Not only does this claim defy logic on its face, but Bell Atlantic's statements that it needs GTE's "proximate" suburban facilities to "enable" it to compete in major out-of-region markets must also be placed against Bell Atlantic's representations to the Commission in the Bell Atlantic-NYNEX Corp. ("NYNEX") merger proceeding that its facilities in Northern New Jersey did not facilitate its entry into New York City.

Similarly, Bell Atlantic and GTE claim that they must combine into a super-RBOC, with annual operating revenues of $53 billion and market capitalization of over $125 billion, in order to make it possible for them to compete in other local exchange markets. At the same time, they contend that each is somehow subject today to vigorous competition within its region from a multitude of fledgling entrants that have only a fraction of each Applicant's current size, and have none of the advantages of already being an incumbent monopoly. Both of these assertions cannot be correct—and, in fact, both are false. Rather, as Applicants are well aware, the chief obstacle to local competition is not lack of access to capital, but that incumbent LECs such as Bell Atlantic and GTE have done everything in their power to make network elements unavailable and otherwise to thwart implementation of the Act. The merger will do nothing to remedy this fundamental obstacle to meaningful competitive entry.

Applicants also resort to semantic gymnastics to try to explain why they are not, after all, likely competitors. Just as it did when seeking permission to merge with NYNEX, Bell Atlantic claims it had "no relevant plans" to compete in nearby out-of-region markets. But in reality (to take one example), Bell Atlantic has been actively negotiating with Cox Communications to use that carrier's fiber facilities to provide local services in GTE's territories.

This Application thus presents multiple grounds for denial and none that would justify a grant. In particular, this is not a transaction whose anticompetitive implications can be saved by the imposition of conditions. That was the course the Commission followed the last time Bell Atlantic sought approval for such a merger, for the Commission concluded that only with pro-competitive conditions could the Bell Atlantic-NYNEX merger be compatible with the public interest. Bell Atlantic then immediately proceeded, however, to declare those conditions—in Bell Atlantic's own words—a "dead letter," both substantively meaningless and unenforceable by the Commission. *See* Section IV. Moreover, Applicants themselves have recognized that because of their successes to date in thwarting full implementation of the Act, any conditions that are likely to be imposed would be toothless. According to Bell Atlantic's General Counsel, Applicants have sufficient "regulatory headroom" so that even if they had to make merger commitments to secure this Commission's approval, they could "make some concessions that look good, but [that have] really no impact on business." Bell Atlantic-GTE Press Conf. (July 30, 1998).

This latest merger proposal thus calls to mind the old Scottish proverb "Fool me once, shame on you; fool me twice, shame on me." *See Filloramo v. Johnston, Lemon & Co., Inc.*, 700

F. Supp. 572, 580 n.5 (D.D.C. 1988). If the Commission reaches the same point in its analysis of this merger as it did in Bell Atlantic's last merger proceeding and concludes—as it must—that an unconditioned approval would set back competition rather than advance it, then the Application cannot be salvaged by the imposition of conditions. It should simply be denied.

ARGUMENT

The standard for reviewing this Application is well established. In order to transfer the licenses at issue in this proceeding, Applicants must prove the transaction "serve[s]" the "public interest." 47 U.S.C. § 310(d). In this context, that means that Applicants must shoulder the burden of affirmatively demonstrating that their proposed merger *enhances* competition. *Applications of NYNEX Corp. and Bell Atlantic Corp. for Consent to Transfer Control of NYNEX Corp.*, 12 FCC Rcd. 19985, ¶¶ 2-3 (1997) ("*BA-NYNEX Merger Order*"). Moreover, in approving the merger between Bell Atlantic and NYNEX, the Commission stated that, in light of the "impact of the declining number of large incumbent LECs on [the] Commission's ability to carry out properly its responsibilities to ensure just and reasonable rates, to constrain market power in the absence of competition, and to ensure the fair development of competition," all subsequent such applicants must meet "an *additional* burden [beyond that applied to Bell Atlantic and NYNEX] in establishing that a proposed merger will, on balance, be pro-competitive and therefore serve the public interest, convenience and necessity." *BA-NYNEX Merger Order* ¶ 16 (emphasis added); *see also* "Consumers First," Remarks of Commissioner Susan Ness Before the Consumer Federation of America Utility Conference, at 5 (Oct. 1, 1998) ("Remarks of Commissioner Ness") ("We must, and we will, review [RBOC mergers] carefully. We must, and we will, ask hard questions. We must, and we will, center our public interest analysis on the likely effects on competition and on consumers.").

Under that standard, or any other that focuses on the public interest, this merger cannot be defended or approved. As demonstrated below, the consolidation of Bell Atlantic and GTE holds no prospect of enhancing competition, but, to the contrary, would substantially harm competition in local, long distance and data services markets and disserve the public interest. Moreover, Bell Atlantic's response to the merger conditions imposed in connection with its acquisition of NYNEX precludes approval of this Application based on yet another set of conditions.

I. THE MERGER WOULD ONLY FURTHER IMPEDE EFFORTS TO OPEN TO COMPETITION THE MONOPOLY MARKETS IN BELL ATLANTIC'S AND GTE'S TERRITORIES AND WOULD ENHANCE THEIR ABILITY TO LEVERAGE THAT MONOPOLY INTO OTHER MARKETS

As Applicants have recognized, the *BA-NYNEX Merger Order* sets forth the "rigorous standard[]" under which this merger is to be reviewed. Petition to Deny of GTE Serv. Corp., CC Docket No. 97-211, at 4-6 (FCC Jan. 5, 1998) ("GTE Pet. to Deny"). In order to assess whether a merger is anticompetitive and for that reason contrary to the public interest, the Commission must determine whether there are likely market participants that can overcome the significant entry barriers into the local exchange market and check the exercise of market power by the combined entity—either from unilateral or coordinated action. *BA-NYNEX Merger Order* ¶¶ 45-46.[1] In addition, the Commission must determine whether the merger reduces its ability "to develop and enforce pro-competitive rules necessary to achieve competition and deregulation." *Id.* ¶ 47. These concerns take on a "special significance" when, as here, the merger involves the acquisition of a potential new entrant by an incumbent monopolist because "[e]ven if [the potential new

[1] These barriers include the staggering costs of the assets necessary to enter, the specialized service skills needed to operate a local exchange network, and the need to achieve a substantial market share to achieve economies of scale. These barriers would exist even if—contrary to (continued . . .)

entrant] seems clearly to be one of several firms which are 'equally probable' potential entrants, it is important to preserve all those significant possibilities of eroding the monopoly, and to prevent possible reinforcement of the monopolist's position via the assets acquired." *Id.* ¶ 66 n.155 (quoting Phillip Areeda & Herbert Hovenkamp, 3 *Antitrust Law* ¶ 170d at 134-36 (1996)).[2]

As demonstrated below, the Commission must reject the Application because this merger is patently anticompetitive and would, in at least four independent respects, "eliminate or retard competition" in the local telephone markets in which Bell Atlantic and GTE maintain bottleneck control and in the adjacent long distance market. *Id.* ¶ 48. *First*, the merger would strengthen Applicants' incentive and ability to use their bottleneck facilities to foreclose the emergence of local competition. *Second*, the merger would eliminate one of the most significant potential entrants into each Applicant's territory. *Third*, the merger would enhance Applicants' ability to price squeeze their long distance competitors. *Fourth*, particularly when viewed in the context of the pending merger between Ameritech Corp. ("Ameritech") and SBC Communications, Inc. ("SBC"), if consummated, this merger would greatly facilitate maintenance of the *status quo* in which no RBOC competes in one another in core markets and would threaten the limited competition that does exist for the development of innovative products and services.

(. . . continued)
fact—the Act had been fully and faithfully implemented by Applicants. *Id.*

[2] Likewise, even if a merger "does not decrease the current level of competition," it "does *not* serve the public interest" where it "impede[s] the development of *future* competition." Memorandum Op. and Order, *In the Matter of Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom, Inc.*, CC Docket No. 97-211, ¶ 4 (FCC Sep. 14, 1998) ("*MCI-WorldCom Merger Order*") (emphasis added).

A. The Principal Effect Of The Merger Would Be To Further Entrench Applicants' Bottleneck Monopolies By Enhancing Applicants' Incentives And Abilities To Raise Rivals' Costs

Applicants assert that this combination will result in "more competitive markets" including the emerging market for "bundled telecommunications products." Public Interest Statement at 5, 9. Indeed, Applicants claim that this merger presents "one of the best possible vehicles for achieving local competition under the 1996 Act." *Id.* at 2. Nothing could be further from the truth. In reality, Applicants have maintained their local monopolies since the adoption of the Act by abusing the market power resulting from their control of the bottleneck networks that are connected to each and every home and business and by repeatedly litigating to block rules governing access and interconnection to their networks. The proposed merger will only further entrench Applicants' local service monopolies by enhancing their incentive and capability to exclude competitors.

1. Bell Atlantic and GTE Currently Face No Effective Competition

As Applicants well know, they face no meaningful competition in their respective regions. That is why, despite Applicants' repeated claims regarding the level of competitors that they face, Public Interest Statement at 29-30; Stallard Decl. ¶¶ 17-18; Whelan Decl. ¶ 7, their presentation lacks *any* market share data or objective evidence regarding the ability of this competition to restrain Applicants' market power. *See id.* In fact, the only "evidence" Applicants submit for their claims pertains only to two states—Pennsylvania and Virginia—and only for Bell Atlantic. *Id.* [3]

---

[3] This absence of data contrasts sharply with GTE's claims in other contexts regarding the obligations of applicants in proceedings such as these. In the MCI-WorldCom proceeding, GTE asserted that the Commission could not approve a horizontal merger on the basis of "bare assertions" regarding the level of competition each party faces. GTE Pet. To Deny at 9. Rather,
(continued . . .)

Applicants' desire to withhold real evidence is understandable. That is because these data show almost nonexistent market share for new entrants. For example, taking Bell Atlantic's undocumented assertions regarding the level of competition in Pennsylvania and Virginia,[4] Bell Atlantic still controls approximately 96 percent and 98 percent of total switched access lines in its service areas in those respective states.[5] Even in New York City, Bell Atlantic's "most competitive" market, new entrants have captured only 6 percent of business customers. *MCI-WorldCom Merger Order* ¶ 168. There has been so little entry in GTE's region that Applicants do not bother to provide even the most rudimentary quantitative estimates of competition that GTE faces. *See generally* Consumer Federation of America, *Stonewalling Local Competition: The Baby Bell Strategy to Subvert the Telecommunications Act of 1996* 20 (1998) (estimating that local competition affects little more than one percent of the local market and an even lower percentage of residential service).

Nor are these figures likely to change in the near term because the Act's principal vehicles for fostering immediate local competition are currently not viable. *See generally* Comments of AT&T to Update and Refresh the Record, CC Docket No. 96-262 (FCC Oct. 26,

(. . . continued)
it stated, merger applicants shoulder the affirmative obligation to provide "studies" and "data" regarding "their market shares, their facilities [and] the extent of their competitive overlaps." *Id.* at 5, 8-9 (citing *BA-NYNEX Merger Order*). GTE's observation about MCI and WorldCom is apt here: despite Applicants' lofty claims of "extensive competition," Public Interest Statement at 29, "[n]ot only is there no meat on their bones, but the bones themselves are missing," GTE Pet. to Deny at 10.

[4] Applicants assert that in Pennsylvania that there are 145,000 facilities-based lines and that Bell Atlantic has provided 76,000 resale lines and 20,000 unbundled loops. Public Interest Statement at 29. Likewise, they assert that in Virginia that there are 40,000 facilities-based lines and that Bell Atlantic has provided 11,000 resale lines and 600 unbundled loops. *Id.* at 29-30. It should be noted, however, that Applicants do not define these terms and could be including their own unbundled loops in their "facilities-based lines" totals.

[5] Preliminary Statistics of Communications Common Carriers at 140 (FCC 1997).

1998) (explaining generally the extent of incumbent LEC market power and the lack of local exchange competition). Without the availability of existing combinations of network elements, as a result of the Eighth Circuit's decision in *Iowa Utilities Board v. FCC*[6]—or even a viable method for competitive LECs to combine network elements themselves—the major interexchange carriers ("IXCs") have been forced to abandon broad-based entry that relies on the use of incumbent LECs' facilities. Likewise, even USN—the "poster child" for reselling local services—has announced that it is abandoning that means of entering the local market because the discounts provided by incumbent LECs have made this means of entry uneconomical.[7] Indeed, Applicants themselves admit that the economics of resale "are too unattractive" to permit competitive LEC entry in their regions. *See* Public Interest Statement at 30-33; Kissell Decl. ¶ 4. And given its staggering costs, extensive facilities-based competition in Applicants' regions is not imminent. *See* Department of Justice/Federal Trade Commission 1992 Horizontal Merger Guidelines § 3.1, *reprinted in* 4 Trade Reg. Rep. ¶ 13,104 (1992) ("DOJ/FTC Horizontal Merger Guidelines") ("only those committed entry alternatives that can be achieved within two years from initial planning to significant market impact" are relevant for determining potential of entry to mitigate the anticompetitive impact of a merger).

The absence of competition is confirmed by Applicants' own financial statements. For example, despite being a rate-regulated monopolist, GTE has reported remarkable returns on equity: 36.5 percent (1997); 38.1 percent (1996); 37.9 percent (1995) and 46.2 percent (1994). GTE 1997 10-K at 15. Indeed, in its most recent 10-K, GTE reported "record growth in access lines and network usage" that fueled a 9 percent increase in local service revenues. *Id.* at 18.

---

[6] 117 F.3d 1068, *on rehearing*, 120 F.3d 753 (8th Cir. 1997), *cert. granted*, 118 S. Ct. 879 (1998).

[7] *See* Troubles of USN Call into Question Viability of Local Resale at Current Discounted Rates,

(continued . . .)

Bell Atlantic likewise recently reported substantial local service revenue growth created by "[h]igher use[] of [its] network facilities." Bell Atlantic 1997 10-K at 4.[8]

2. The Merger Would Enhance Applicants' Incentives to Raise Rivals' Costs and Foreclose Local Entry

Given Applicants' control of bottleneck facilities, and the high costs of duplicating those facilities, new entrants generally must have access to Applicants' networks in order to compete effectively. Applicants, of course, have substantial incentives to deny such access in order to preserve market power. *See generally Premier Elec. Constr. Co. v. National Elec. Contractors Ass'n*, 814 F.2d 358, 368 (7th Cir. 1987) (citing T. Krattenmaker & S. Salop, *Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power over Price*, 96 Yale L.J. 209 (1986)) (explaining the ability to obtain or preserve market power from raising rivals costs). The Act seeks to prevent such abuses, however, by mandating that incumbent LECs provide such access on "just, reasonable, and nondiscriminatory conditions" and "rate[s] . . . based on the cost" of the access. 47 U.S.C. §§ 251-252. Nonetheless, detection of discriminatory conduct by incumbent LECs is difficult to regulate because standards governing access are still in their infancy. Affidavit of John Mayo and David Kaserman ("Mayo/Kaserman Aff.") ¶ 37 (App. A). Beyond outright refusals to allowing access, incumbent LECs can engage in more subtle forms of discrimination such as delaying the availability of access, degrading the quality of access and charging more than the economic costs of access. *Id.* ¶¶ 24-31. The ability to detect and prevent such discrimination is further made difficult by the significant technological changes that have recently swept the telecommunications industry. *Id.* ¶ 37.

(. . . continued)
Telecommunications Reports, Sept. 14, 1998, at 5.

[8] Bell Atlantic does not report return on equity in its financial statements.

This combination will only increase Applicants' incentives to deny, delay and degrade access to their networks by new entrants. This is so because, as Professors Mayo and Kaserman explain, these exclusionary practices have substantial "spill over" effects that Applicants do not currently capture. *Id.* ¶ 34; *see also* Declaration of Michael Katz and Steven Salop, CC Docket No. 98-41, ¶¶ 27-86 (FCC Oct. 15, 1998). In other words, when an incumbent LEC discriminates, it does not capture the full "benefits" from raising its rivals' costs both inside and outside its region. The merger, however, by allowing Bell Atlantic and GTE to more fully internalize these "benefits," increases the incentives of each to foreclose competitive entry.

For example, a new entrant that suffers lower quality or higher costs in one region will be less likely to enter other regions as well. Even if local markets are distinct, there are common costs such as research and development, advertising and back office support. In addition, reducing the customer base in one region lowers overall return on investments. It can also drive up a new entrants' costs on a nationwide basis because of scale economies. Hence, the merger increases the incentives of post-merger Bell Atlantic to engage in exclusionary conduct by allowing Bell Atlantic to internalize the value of raising rivals' costs not only in its original region, but also in GTE's region. *See* Mayo/Kaserman Aff. ¶ 37 (App. A).

The merger would also enhance the Applicants' incentives to engage in conduct that will harm the reputation of a new entrant in a larger geographic area. *Id.* ¶ 33. Thus, for example, providing a fledgling competitive LEC with poor quality access in the Bell Atlantic region will also damage the competitive LEC's reputation in GTE's region. As the FCC recognized, "[f]or mass market services, entrants will have to invest in establishing brand name recognition and, even more important, a mass market reputation for providing high quality telecommunications services." *BA-NYNEX Merger Order* ¶ 6. The impact of such reputational harm will be severe given that basic local phone service is seen as a necessity by most consumers.

3. The Merger Would Enhance Applicants' Ability to Raise Rivals' Costs

Not only would the merger boost Applicants' incentives to exclude their would-be competitors, but it also would further enhance their *ability* to engage in such discriminatory practices.

a. Best practices

Applicants claim that a merger would benefit consumers by increasing competition and by allowing them to lower costs through the sharing of "best practices." Public Interest Statement at 22. But Applicants have done all that is in their power to block local competition. Thus, the only logical conclusion is that they intend to share "best practices" on how to exclude competitors from their monopoly markets. This is particularly troubling because there are substantial economies of scope and scale for engaging in predation through the litigation process. *Accord*, Robert Bork, *The Antitrust Paradox* 159-60, 374-64 (1978) (describing in detail the ability to engage in predation through abuse of government process).

Indeed, in a rare moment of candor, Bell Atlantic has admitted that this is a central aspect of the merger. As Bell Atlantic CEO Ivan Seidenberg colorfully put it, "You know the expression 'I want to be like Mike?' Well, in term of regulations 'we want to be like Chuck' [Lee]"—*i.e.*, GTE. Bell Atlantic-GTE Press Conf. (July 28, 1998). Similarly, Bell Atlantic General Counsel James Young told investors that Bell Atlantic was looking to leverage GTE's regulatory expertise because GTE "has done far better . . . than Bell Atlantic has in getting unbundled element rates." Bell Atlantic-GTE Press Conf. (July 30, 1998). These comments bode poorly for consumers because they make clear that Bell Atlantic intends to emulate GTE's aggressive tactics to thwart the pro-competitive purposes of the Act. *See generally* Affidavit of Joyce Beasley ("Beasley Aff.") (App. B). Indeed, GTE has been so effective at excluding competitors, that, in the words of Mr. Young, even if GTE "had to commit to something like [the] UNE platform is some places, you can do the math, but when you look at [GTE's] unbundled [element] rates there, I think [that] you can make some concessions that look good, but [that have] really no impact on the business." Bell Atlantic-GTE Press Conf. (July 30, 1998). *See also id.* ("I think [GTE General Counsel] Bill [Barr] has, if you pardon the expression, some regulatory head room here because he's done so well on his unbundled element prices.") (statement of James Young).

Of course, to date, GTE has not bothered making even paper concessions that "look good" but instead has maintained its entrenched position as the dominant provider of local exchange and access services in its region since adoption of the Act through its control of bottleneck local exchange facilities, and through perpetual litigation concerning the rules governing access and interconnection to its networks and the validity of the Act itself. As the attached affidavit of Joyce Beasley demonstrates, GTE has taken a series of patently unreasonable positions that can be consistent only with an anticompetitive animus to delay and preclude entry. Indeed, state public utility commissions have agreed that GTE's negotiating and litigation positions are unreasonable. Beasley Aff. ¶¶ 9, 12 (describing decisions, including those finding GTE's cost studies to be "untrustworthy" and "designed to maintain GTE's monopoly revenue stream") (App. B). For example, with regard to GTE's claims that GTE—"a global communications and media company providing a range of services," Application at 3—should be exempt from the Act's obligations as a rural telephone company, the Public Utilities Commission of Ohio stated that GTE's "posturing certainly causes us to step back and ponder the company's intentions including whether the company is positioning itself to act in an anti-competitive fashion going into the emerging local competitive era." *Id.* ¶ 9. In fact, GTE has done precisely that, and has frankly admitted to AT&T that its negotiating posture was influenced by the fact that it was not bound by Section 271. *Id.* ¶ 4.

GTE's stonewalling is evident from the fact that AT&T has final agreements with GTE in only nine states out of the 27 for which AT&T originally sought interconnection with GTE. *Id.* ¶¶ 4, 24. Even state commission arbitrations do not induce GTE to yield to the Act's market opening obligations—to the contrary, where GTE disagrees with an arbitration, it has insisted on the addition of patently unreasonable contract terms that seek to nullify any binding obligations, *id.* ¶¶ 16-18, and has simply refused to sign arbitrated interconnection agreements.[9] Likewise, GTE has brought patently anti-competitive appeals from those decisions in which GTE has argued that network element rates should include its "opportunity costs" and "historical costs" thereby allowing GTE "to insulate it[self] from market-based losses while capturing all of its expected profits and revenues." *GTE South Inc. v. Morrison*, 6 F.Supp.2d 517, 528 (E.D.Va. 1998).

While perhaps GTE's pupil in this regard, Bell Atlantic will still be able to teach GTE its own best practices in raising rivals' costs. Bell Atlantic has used its control over bottleneck facilities, for example, to prevent new entrants from collocating equipment in its central

---

[9] For example, in California, as well as several other states, GTE refused to sign the interconnection agreement as arbitrated until language like the following was inserted:

> GTE California does not consent to this purported agreement (which does not comply with the federal Telecommunications Act of 1996) and does not authorize any of its representatives to consent to it. The signature of a GTE representative has been placed on this document only under the duress of an order of the Public Utilities Commission of the State of California requiring such signature.

(continued . . .)

offices—a particularly vital matter given Bell Atlantic's refusal to provide network element combinations. While the Act requires incumbent LECs to allow physical collocation, 47 U.S.C. § 251(c)(6), it also permits "virtual" collocation when there is no space for physical collocation, *id.* Virtual collocation, however, is more costly and cumbersome, and, more fundamentally, forces the new entrant to rely on the incumbent's personnel to operate its equipment. Virtual collocation makes it particularly difficult for new entrants to introduce new services because they must train incumbent LEC personnel on how to use the new equipment and then rely on them to operate the equipment properly.

Recognizing this fact, Bell Atlantic has filed a series of requests with state commissions to prevent AT&T from physically collocating in its central offices. For example, Bell Atlantic told the Delaware Public Service Commission ("Delaware PSC") that there was no space for physical collocation in four central offices in Delaware (about 25 percent of the central offices in Delaware). A walk through ordered by the Delaware PSC, however, revealed that this request was a sham.[10] In one central office, supposedly occupied space was filled with Christmas decorations, an office area was stacked with unused desks and chairs, and in an equipment area, there was a rack of equipment labeled "not working." Affidavit of Patricia Boyle, PUC 9601464, ¶ 8 (Va. SCC Oct. 22, 1998) (App. C). All told, over 2,500 square feet of space was available. *Id.* The inspection of another central office revealed that there was over 1,000 square feet of available space and that Bell Atlantic had placed obsolete equipment (including rotary telephones and early vintage personal computers) in a large room that would otherwise be

---

(. . . continued)
Id. ¶ 18.

[10] As a result of these inspections, Bell Atlantic withdrew its requests for all of these central offices.

available to new entrants in order to give the room the appearance of being used by Bell Atlantic. *Id.* ¶ 9. Most recently, Bell Atlantic has sought to block collocation in six Northern Virginia central offices claiming that space is unavailable to new entrants because it is needed for unspecified "future use" by Bell Atlantic, while at the same time giving neither the parties nor the Virginia State Corporation Commission the opportunity to inspect these offices. *See generally* Response of AT&T Communications of Virginia, Inc. in Opposition to Bell Atlantic, PUC 9601464, (Va. SCC, Oct. 22 1998) (App. D).

Similarly, as the attached affidavit of Paul Kouroupas ("Kouroupas Aff."), explains, Bell Atlantic has also acted anticompetitively in its provision of advanced telecommunications services. In particular, Bell Atlantic delayed in providing required interconnection and unbundled network elements to AT&T (and prior to their merger, to Teleport Communications Group ("TCG")) that it seeks to use, along with its own facilities, to provide 64 kbps Clear Channel ISDN capacity and HDSL. Kouroupas Aff. ¶¶ 8-23. All the while, Bell Atlantic apparently has worked to provide its own advanced services, which it is now aggressively marketing. *Id.* ¶ 17 (App. E).

In one of the most egregious instances of this favoritism, Bell Atlantic rejected, on the basis of a purported "lack of capacity," TCG's numerous requests for interconnection at the 64 Clear Channel ISDN Capacity level at Bell Atlantic's tandems, which would have allowed TCG to provide ISDN services more efficiently and at higher quality.[11] *Id.* ¶¶ 8-13. As a result, TCG had to reject orders from prospective customers. *Id.* ¶¶ 10, 13. Yet TCG later discovered that

[11] Bell Atlantic's refusal to interconnect also denied consumers the "inter-operability" of TCG's network with Bell Atlantic's network, meaning that TCG's ISDN customers could not connect with Bell Atlantic's at the ISDN level. Kouroupas Aff. ¶ 4 (App. E). Bell Atlantic's actions hurt both groups of consumers, and hindered the efforts to develop an advanced "network of
(continued . . .)

one prospective customer for 64 Clear Channel ISDN capacity that TCG had to turn away because of Bell Atlantic's alleged capacity constraints had contacted Bell Atlantic and had obtained the same service directly from Bell Atlantic. *Id.* ¶ 13. Only after significant delay and TCG's filing of a formal complaint did Bell Atlantic begin to change its unreasonable conduct. *Id.* ¶ 14. Bell Atlantic has employed similar tactics with TCG's efforts to provide HDSL, by delaying the provision of underlying unbundled, HDSL-compatible loops, while apparently working to implement and market its own ADSL service. *Id.* ¶¶ 17-23. This discrimination against competing providers in favor of its own retail operations presents a prototypical example of a monopolist exploiting its market power to harm rivals and consumers.

b. Coordinated exclusion

In addition to enabling Bell Atlantic and GTE to share their exclusionary practices, the merger would permit them to coordinate their exclusionary conduct and make detection more difficult. Mayo/Kaserman Aff. ¶¶ 35-39 (App. A). For example, a new entrant that has facilities in both Bell Atlantic's and GTE's regions (or that is purchasing access to Bell Atlantic's and GTE's network elements) can be subject to exclusionary practices by both incumbent LECs. However, if Bell Atlantic attempts to exclude the new entrant by blocking collocation while GTE attempts to exclude the new entrant by making claims regarding interference caused by a new entrant's equipment, the new entrant can determine that each is engaging in discriminatory practices by the fact that GTE permitted the arrangement that Bell Atlantic sought to block and *vice-versa*. Post-merger, however, Bell Atlantic and GTE can perfectly align their exclusionary practices. In other words, Bell Atlantic and GTE can avoid

---

(. . . continued)
networks." *Id.* ¶ 24.

detection simply by adopting the same exclusionary practices. By combing the companies into one entity, the merger makes this strategy much more practical and far less costly.

c. Benchmarking

Moreover, the merger not only would increase Applicants' incentives and abilities to engage in discriminatory conduct to exclude new entrants, but, by decreasing the number of large incumbent LECs, would also make it more difficult for the Commission to use regulatory processes to check such market power abuses either by Applicants or by the remaining RBOCs. *Id.*; *see generally* Declaration of Joseph Farrell and Bridger Mitchell, CC Docket 98-141, at 2-48 (FCC Oct. 15, 1998) (explaining in detail the need for using relative-performance evaluation to regulate incumbent LECs).

The number of RBOCs was considered a significant element in the restructuring of the Bell System divestiture and necessary to curb anticompetitive conduct by these incumbent LECs. Specifically, the Department of Justice believed it desirable to dilute the monopoly power that the RBOCs otherwise possessed as buyers of equipment and services. *See, e.g.*, Response of the United States to Public Comments, Civ. Action No. 82-0192, at 128-29 (D.D.C. May 20, 1982). Similarly, the existence of independent, incumbent LEC decisionmakers created "benchmarks" that have been repeatedly used by "federal and state regulators . . . in evaluating compliance with equal access requirements . . . and in comparing installation and maintenance practices for customer premises equipment." *United States v. Western Elec. Co.*, 993 F.2d 1572, 1580 (D.C. Cir. 1993).[12]

[12] *See, e.g., BA-NYNEX Merger Order* ¶ 147 (listing examples); *Shared Transport Order* ¶ 26 n.77 (using benchmarking to reject Ameritech's claims regarding the technical feasibility of shared transport).

The Commission has likewise recognized the utility of benchmarking. Indeed, in its *BA-NYNEX Merger Order*, the Commission emphasized that the existence of numerous independent LECs for benchmarking was critical to implementation of the pro-competitive purposes of the Act because it allows the Commission "to discover solutions to issues and to resolve problems sooner than [it] otherwise would." *BA-NYNEX Merger Order* ¶ 153. On the other hand, as the Commission explained, reducing the number of large incumbent LECs would impair the

> Commission's ability to carry out properly its responsibilities to ensure just and reasonable rates, to constrain market power in the absence of competition, and to ensure the fair development of competition that can lead to deregulation. . . . As diversity among carriers declines, both this Commission and state commissions may lose the ability to compare performance between similar carriers that have made different management or strategic choices.

Id. ¶ 16. Indeed, it was for this very reason that the Commission imposed "an *additional* burden" on incumbent LEC applicants in the future to "establish[] that a proposed merger will, on balance, be pro-competitive and therefore serve the public interest, convenience and necessity." *Id.* (emphasis added). *See also id.* ¶ 156 ("Further reductions, however, become more and more problematic as the potential for coordinated behavior increases and the impact of [the] individual company actions on our aggregate measures of the industry's performance grows.").[13] This concern is now even more pressing in light of the proposed Ameritech-SBC merger.

---

[13] Commissioner Ness recently emphasized this precise point:

> We also need to consider the effect of mergers on our ability to 'benchmark.' How often have we heard from multiple carriers that something is impossible, but then some maverick showed it could be done. Think of the wholesale-retail split that Rochester Telephone pioneered. Or the Customers First deal Ameritech cut with the Justice Department. Or Ameritech's cable over-build strategy.
>
> The Bell companies themselves told Judge Greene in 1987 that there was much less to worry about because there were seven independent regional Bell companies. But now there are only five, and some are saying the U.S. market will be reduced to two

(continued . . .)

Given the importance of benchmarking, it is astonishing that Applicants make no attempt to explain why regulation is sufficient to protect the public interest from market power abuses, let alone to meet the "additional burden" imposed by the Commission. This failure is particularly conspicuous in light of the fact that Applicants have themselves repeatedly emphasized the importance of benchmarking when it has suited their purposes. For example, Bell Atlantic has stated that "[e]ach BOC serves as a benchmark against which the Commission can measure the performance and behavior of the next; such comparisons were quite impossible before divestiture."[14] Likewise, Bell Atlantic (then NYNEX) opined "[w]ithout such benchmarks, there was no uncomplicated and ready test for uncovering anticompetitive conduct."[15]

B. The Proposed Merger Would Eliminate One Of The Most Significant Potential Entrants In Each Applicant's Territory

The merger is also anticompetitive because it eliminates one of the best hopes of immediate and effective competition in Bell Atlantic's and GTE's territories. It could not be clearer that Bell Atlantic and GTE are among the most significant market entrants in each other's territories and that, absent the proposed merger, they could have—and would have—competed against each other. Not only do Bell Atlantic and GTE have advantages that no other possible local service market entrant possesses, but each had specific plans to enter each other's markets.

(. . . continued)

"super-carriers."

Remarks of Commissioner Ness at 5.

[14] Bell Atlantic, BellSouth, NYNEX and Southwestern Bell Corp. Motion to Vacate the MFJ, Civil Action No. 82-0192, at 29 (D.D.C. July 6, 1994).

[15] NYNEX Response to Comments Filed on the Report and Recommendations of the Department of Justice Concerning Section II(D) of the Modified Final Judgment, Civil Action No. 82-0192, at 10 (D.D.C. Apr. 27, 1987).

And given these unique advantages, the competition created by such entry would clearly have resulted in lower prices, better service, and innovative products. By contrast, the elimination of this competition is the worst of all worlds: the creation of a super-RBOC even more capable and willing to entrench its local monopoly.

1. Adjacent Incumbent LECs are the Most Significant Market Participants

An out-of-region incumbent LEC is the entity best positioned to break through other local exchange bottlenecks and provide the kind of local competition the Act intends. The reason is that the provision of exchange services to a broad base of residential and business customers requires an extensive array of complex "back office" order taking, customer care, billing, fulfillment, and related systems that no IXC or cable company has today, for they are unique to the local exchange business. *BA-NYNEX Merger Order* ¶¶ 106-08. These systems are required regardless of whether entry occurs through resale, through use of unbundled elements, or through some form of facilities-based entry, and therefore an incumbent LEC alone can enter other local markets without incurring the enormous time and expense of developing these systems and acquiring expertise in their operations. And only an incumbent LEC has the mastery of the local exchange technical and operational support characteristics and cost structures required to counter the inevitable incumbent resistance to the requisite unbundling, pricing and service support. In addition, an incumbent LEC would bring "particular expertise to the interconnection negotiation and arbitration process because of its intimate knowledge of local telephone operations," thereby allowing it to secure more favorable terms and conditions for leasing the in-region incumbent's facilities than other new entrants could ever hope to obtain. *Id.* ¶ 107.

These comparative advantages are heightened in the case of contiguous LECs like Bell Atlantic and GTE. *Id.* ¶¶ 73-79, 106-07.[16] *First*, each company has an array of switches and switching locations that have capacity (or can be readily upgraded) to provide switching for local calling in the other's territories. Thus, for example, GTE is well poised to attack major Bell Atlantic markets like Washington, D.C. from its facilities in Loudoun and Prince William Counties, Virginia, while Bell Atlantic can economically extend its existing network to enter GTE's territory in Virginia Beach, Virginia. These facilities have virtually the same proximity to individual customers as would newly-installed switches of any new entrant. *Second*, any contiguous LEC can lease or build transport from its switches to a newly entered market more readily than other potential local service providers, because of its proximity to the newly entered market and its understanding of the requirements for local exchange services. *Third*, as contiguous LECs, Bell Atlantic and GTE also have a unique ability to use remote digital loop carriers to serve out-of-region end users. Such technology has a range of about 125 miles, which would permit it to be used in conjunction with the contiguous provider's switch in its nearby home territory. *Fourth*, because of extensive advertising in media markets that cross each other's regions, both Bell Atlantic and GTE have brand recognition in each other's regions.[17]

[16] *See generally* Affidavit of William Mosca, Petition of AT&T Corp. to Deny or, in the Alternative, to Defer Pending Further Investigation and Briefing, *In the Matter of Proposed Merger of Bell Atlantic Corp. and NYNEX Corp.*, Report No. 960205 (FCC Sep. 23, 1996).

[17] Although AT&T is seeking through its proposed acquisition of Tele-Communications, Inc. ("TCI"), to enter local markets through the provision of cable telephony, that combination would still lack the unique and immediate advantages of incumbent LECs—especially contiguous incumbent LECs such as Bell Atlantic and GTE. Moreover, AT&T cannot provide cable telephony service through TCI until after the Commission approves the proposed transaction and until after expensive and time-consuming upgrades have been completed. In addition, TCI's facilities—even if affiliates' facilities are included—are only deployed in approximately 30 percent of the country, and do not serve such major cities in Applicants' regions as Washington, Boston, Harrisburg, and Honolulu.

While portraying themselves as having "no special set of advantages over other CLECs" as far as their ability to enter each other's territory, Public Interest Statement at 29, Applicants effectively concede elsewhere that they have unique capabilities that make them the most significant potential entrant. More specifically, Applicants maintain that out-of-region local competition by an incumbent LEC is not practicable where its "service areas are geographically separated from the major service areas" of the target region. *Id.* at 1. Rather, Applicants argue that out-of-region local entry "requires truly proximate facilities" and "a base of anchor customers." *Id.* at 7. *But Applicants are the only carriers that satisfy these requirements.* (Indeed, it is the proximity of GTE's local network to the major markets of the *other* RBOCs that is the purported *raison d'être* of the merger). Only GTE has incumbent local exchange facilities in close proximity to many of Bell Atlantic's major markets—*e.g.*, Norfolk-Newport News, Virginia, Pittsburgh, Pennsylvania, and Washington D.C.—while Bell Atlantic surrounds GTE in both Pennsylvania and Virginia.[18] And Bell Atlantic and GTE are the only entities with local exchange facilities proximate to one another that have an established base of large local exchange customers. Indeed, it was precisely because of these considerations, coupled with the fact that no new entrant has the back office support and local exchange expertise that incumbent LEC's like Bell Atlantic and GTE possess, that the Commission concluded that Bell Atlantic possessed "unique advantages not possessed by other market participants" when considering the impact of the Bell Atlantic-NYNEX merger. *BA-NYNEX Merger Order* ¶ 107; *see also id.* ¶¶ 132, 134.

[18] A color map demonstrating the proximity of Bell Atlantic's and GTE's territories in Virginia is attached as Exhibit 3 to the accompanying Affidavit of Professors Mayo and Kaserman.

2. Bell Atlantic and GTE in Fact Both Compete Against Each Other and Had Plans to Enter Each Others Markets More Broadly

The Commission has made plain that an objective standard should be used for determining whether a merger would eliminate a potential market entrant. *BA-NYNEX Merger Order* ¶¶ 75-77 & n.166 (citing cases). Here, as discussed above, the objective evidence clearly establishes that both firms have "the characteristics, capabilities, and economic incentive" to render each a potential *de novo* entrant in the other's markets. *United States v Marine Bancorporation, Inc.*, 418 U.S. 602, 624-25 (1974); *see also BA-NYNEX Merger Order* ¶ 76; DOJ/FTC Horizontal Merger Guidelines § 3.1. As discussed above, given the monopoly rents that are available, and the comparative advantage Bell Atlantic and GTE have in entering the other's local markets that no other prospective entrant possesses, Applicants were objectively likely to have entered each others markets.

Moreover, although such objective evidence is itself sufficient to establish that this merger would limit critical competition to the Applicants' monopolies, the evidence here goes much further. Both Bell Atlantic and GTE in fact compete with each other today and had planned broader entry into enter each other's markets. Had such entry occurred, it would have stimulated competition and lowered prices, and it would have given the customers the choice they were promised when the Act was passed.[19]

---

[19] Applicants spend considerable effort trying to re-write the Commission's potential competition jurisprudence, Public Interest Statement at 25-28, but to no avail. *First*, Applicants ignore the Commission's statements in the *MCI-WorldCom Merger Order* that the Commission's transitional market analysis "builds upon the 'actual competition' doctrine established in antitrust case law" by expanding that doctrine to take into account the fact that, unlike in most circumstances, potential competitors were previously precluded from entering other markets by law. *MCI-WorldCom Merger Order* ¶¶ 20-21. This rebuts the ordinary presumption that the fact that a firm has not entered a market means that is unlikely to enter that market. *Id. Second*, the entire basis for Applicants' arguments is their self-serving and unsubstantiated claim that (continued . . .)

Applicants concede (in a well-buried footnote) that they do in fact already compete with each other. Specifically, Applicants state that "[a]t Dulles International Airport, which is in GTE's service area, Bell Atlantic, which has a facility located nearby (at Horsepen Road), has pursued select opportunities (to sell to the airport authority that operates Dulles) . . . such as a pay-telephone contract, limited SONET-based services, and a private Airport Communications System." Public Interest Statement at 32 n.30. While Applicants try to downplay the significance of this competition, *id.*, it vividly confirms why Bell Atlantic has unique advantages in entering GTE's territories. Bell Atlantic was able to extend its proximate facilities into GTE's territories and offer high-end services to business customers. No other new entrant today has these capabilities. And while at present time this competition is limited to Dulles Airport (albeit a major telecommunications user), there is no reason why Bell Atlantic could not offer comparable services to other numerous businesses that are located in the vicinity of the airport.

Indeed, because of the existence of such competitive opportunities, it is unsurprising that Applicants had plans to enter each other's markets. GTE concedes that it had plans to follow "strategic accounts" into Bell Atlantic's territories in Pennsylvania and Virginia. Public Interest Statement at 30. While characterizing these plans as "limited" and "no[t] relevant" to local competition, Public Interest Statement at 29-31, GTE's public statements are to the contrary.[20] For example, GTE told the Alabama Public Service Commission that GTE "has begun preparations to provide *local exchange services* in *all* 50 states." Request for Local Exchange

(. . . continued)
neither Bell Atlantic nor GTE "is a 'perceived' potential competitor" of the other. Public Interest Statement at 26. As explained below, not only are Bell Atlantic and GTE objectively potential competitors of each other, they planned to and do compete with each other.

[20] It is also telling that there is no declaration from a GTE witness asserting that GTE had no plans to compete with Bell Atlantic.

Certification of GTE Communications Corp., at I-9 (Ala. PSC Oct. 20, 1997). GTE also filed applications for certification as a new entrant in Connecticut, the District of Columbia, Maryland, New Hampshire, New York, Pennsylvania, Rhode Island and Virginia, where it represented that it intended to start as a reseller and then move to providing local service using its own facilities.[21] Likewise, Bell Atlantic acknowledges that it extensively studied entry into GTE's territories in Pennsylvania and Virginia and that those studies showed that such entry would be profitable. Public Interest Statement at 31-33.

Applicants' attempts to explain away the significance of these plans is pure sophistry. Just as Bell Atlantic did in the Bell Atlantic-NYNEX proceeding, Applicants try to redefine "plans" to mean only "plans approved and funded by the Board of Directors" in order to support their claims that they had no plans to compete with each other. For example, Applicants state:

> [I]n Virginia Beach, Virginia, the service territories of Bell Atlantic and GTE adjoin. Bell Atlantic, *while not making any plans*, has discussed with Cox Communications the possibility of a partnership to use Cox's fiber facilities to serve the city government's several offices, some of which are in Bell Atlantic's territory and some in GTE's.

Public Interest Statement at 32 n.30 (emphasis added). Hence, according to Applicants, while Bell Atlantic was involved with negotiations to use Cox's fiber facilities to provide local services in GTE's territories, it nonetheless had no "plans" to offer local service even if Cox were amenable to this arrangement. This is manifest doublespeak.[22]

---

[21] A day before filing this Application, GTE withdrew its request for certification in Virginia rather than comply with the Virginia State Corporation Commission Hearing Examiner's order that GTE produce its out-of-region local entry plans. Hearing Examiners Ruling, Case No. PUC980080 (Va. SCC Sept. 30, 1998) (App. F).

[22] Given Applicants' tortured definition of plans, it is logical to presume that they mentioned the Cox negotiations only because the existence of these negotiations could be verified by a third party. However, it is also reasonable to presume that that there are other internal studies that Applicants have not revealed because Applicants do not consider them to be "plans." In this

(continued . . .)

To the extent Applicants now disavow their entry plans by claiming that they foundered due to the high costs of resale and/or the unavailability of network elements, *see* Public Interest Statement at 30, 33; Kissel Decl. ¶¶ 3-4,[23] it confirms AT&T's experience: incumbent LEC misconduct, not inherent economics, is the barrier. Far from being a basis to approve the Application, this misconduct is a reason to deny it. Applicants cannot bootstrap their merger on the basis that they (and other incumbent LECs) have succeeded in eliminating the principal mechanisms Congress put in place in the Act for facilitating immediate local entry. Indeed, it is for precisely this reason that the Commission's potential entry analysis looks at entry decisions based on full implementation of the Act. *BA-NYNEX Merger Order* ¶ 40; *MCI-WorldCom Merger Order* ¶¶ 20-21.

Applicants' claims that GTE would not compete with Bell Atlantic in Pennsylvania and Virginia are also contradicted by Applicants' justification for this merger. Applicants claim that GTE is the "enabler" allowing Bell Atlantic to enter out-of-region markets like "Los Angeles, Dallas, Tampa, and Seattle." Public Interest Statement at 1-2, 6-7. According to Applicants, GTE's "proximate" "suburban" facilities will be the jumping off point for entry into these cities and other major markets. *Id.* But if this is true, then GTE's territories in suburban Virginia provide a mechanism for entry into the District of Columbia (and the surrounding very populous suburbs served by Bell Atlantic such as Fairfax, Virginia and Montgomery County, Maryland).

(. . . continued)
regard, it is also notable that Declarant Stallard, in discussing Bell Atlantic's "limited" incursions into GTE's territory, cites the Dulles Airport entry and the Cox negotiations as "example[s]," and does not represent these two instances to be the full sum of Bell Atlantic's actual or planned competition with GTE. Stallard Decl. ¶¶ 13-14.

[23] Applicants also claim that regulators would not allow Bell Atlantic to enter GTE's territory and compete for high-end business customers (but not *vice-versa*). Stallard Decl. ¶ 16; Whelan Decl. ¶ 5. They provide no support for this proposition.

This same logic also means that GTE's facilities in Virginia Beach can be used to enter the Norfolk-Newport News market area served by Bell Atlantic and that GTE's network in Somerset, Pennsylvania and York, Pennsylvania "enable" GTE to enter respectively Pittsburgh and Harrisburg. Put simply, if GTE can enter Los Angeles from Orange County—and, indeed, had planned such entry, Public Interest Statement at 7—it can certainly enter Bell Atlantic's major markets from its suburban territories in Pennsylvania and Virginia.

And in all events, even if Bell Atlantic and GTE were correct that they could not enter out-of-region markets on their own, that would not justify the merger. Rather, it belies their repeated claims that their markets are open to competition. If, with all their inherent advantages, such large incumbent LECs cannot compete outside of their regions—especially in border markets—how can new entrants without such local exchange expertise or adjacent facilities ever hope to break through the incumbents' local bottleneck? Accordingly, if true, Applicants' claims would only conclusively demonstrate that incumbent LECs have been all too successful in resisting the market-opening requirements of the Act.[24]

C. The Merger Would Impede Competition In The Emerging Bundled Services Market By Allowing Applicants To Subject Their Rivals To Price Squeezes In The Long Distance Market

The merger would also harm competition in the long distance market even if the merged entity receives all necessary Section 271 authorizations. So long as Applicants continue to exercise market power over exchange access—a necessary input for providing long distance

[24] Applicants' assertions that they are not and are unlikely to be competitors is also belied by their insistence that there is a "developing national market" for telecommunications services. Public Interest Statement at 9-15. If this were true, they would be *actual* competitors. Mayo/Kaserman Aff. ¶¶ 46-48 (App. A). And as explained by Professors Mayo and Kaserman, the merger would flunk a straightforward application of the antitrust laws because it would substantially increase concentration in the relevant market. *Id.*

service—they can subject their long distance competitors to price squeezes. The opportunity to impose a price squeeze exists because Applicants' access services are priced well above actual cost. *See generally Town of Concord v. Boston Edison Co.*, 915 F.2d 17 (1st Cir. 1990) (Breyer, J.) (explaining economics of price squeeze); *United States v. Aluminum Co. of America*, 148 F.2d 416 (2d Cir. 1945) (Hand, J.) (same). When Applicants provide long distance services, however, they will not pay these inflated access costs. Rather, because they will be vertically integrated—*i.e.*, they will provide access and long distance services together—they will bear only the actual economic cost of providing access when using their own facilities to originate and terminate their long distance traffic. The portion of the access charge above economic cost amounts only to an intra-company transfer payment to which the merged entity as a whole will be indifferent.[25] Thus, Applicants can underprice competitors and still earn a profit even if their costs of providing interexchange service (other than access costs) are higher than their competitors' costs. Given that these access charges to IXCs are a substantial part of the cost of a long distance call, Applicants can significantly underprice their rivals and still earn a profit.

The merger would greatly increase the efficacy of such price squeezes by giving one entity—the combined RBOC—control over both the origination and termination of a far higher percentage of interLATA calls than either individually controls today. Any increase in the percentage of calls that originate and terminate in a single region increases the incentive and ability to engage in a price squeeze. *See BellSouth Corp. v. FCC*, 144 F.3d 58, 67 (D.C. Cir.

---

[25] Requiring Applicants to provide long distance through a separate subsidiary will therefore not prevent a price squeeze. At most, the separate subsidiary requirement will prevent Applicants' local network subsidiary from rebating to the long distance subsidiary the excess access charge in the form of an intra-company dividend payment. However, the parent company will be indifferent to whether such a payment is made because it cares only about total joint profits, not the individual profitability of the separate subsidiaries.

1998) (recognizing that control over both ends of a call, as opposed to one leg of the call, improves ability for an incumbent LEC to engage in anticompetitive conduct); Mayo/Kaserman Aff. ¶¶ 25-30 (explaining why the merger would facilitate price discrimination) (App. A).[26] After the merger, approximately 50 percent of long distance calls that originate in the merged entity's regions will terminate in its regions. Furthermore, Applicants' expanded ability to impose monopoly access charges over both ends of phone calls permits them to cross-subsidize those retail services most vulnerable to competition, thereby distorting competition in the market for local exchange services that the Act seeks to open—and imposing even greater barriers to entry in that market.

In the *BA-NYNEX Merger Order*, the Commission recognized that an incumbent LEC's ability to charge supra-competitive access rates could permit it to price squeeze potential competitors. *BA-NYNEX Merger Order* ¶ 117. Nonetheless, it permitted the merger to go forward because of Bell Atlantic's commitment to provide network elements at rates based on the Commission's forward-looking total element long run incremental cost standard. *Id.* But as explained below in Section IV, Bell Atlantic has walked away from that commitment. Instead it has attempted to recover network element rates that are based on inefficient, historical costs—a standard that would make it impossible for new entrants to use network elements to avoid Bell Atlantic's exorbitant access charges. In addition, at the time of the Commission's decision, combinations of network elements were still at least theoretically available as a mechanism to

[26] In this regard, the Commission's apparent belief that the comparable increase in the amount of traffic originating and terminating in the combined Bell Atlantic-NYNEX merger did not increase the ability of these RBOCs to price squeeze, *BA-NYNEX Merger Order* ¶ 118, n.230, is mistaken. By increasing the number of calls that originate *and* terminate in-region, a price squeeze is made easier because for these calls, Applicants have even a greater pool of monopoly rents available on a call to effectuate the price squeeze. *Accord*, *BellSouth*, 144 F.3d at 67.

obtain exchange access services at economic costs—and that mechanism, as a consequence of the incumbent LECs' litigation efforts, has now been declared unlawful. *See generally* Comments of AT&T Corp. in Support of Petition for Rulemaking, RM No. 9210, at 6-16 (FCC Jan. 30, 1998) (explaining in detail ability of incumbent LECs to price squeeze despite regulation).[27]

D. If Consummated, This Merger Would Make The Maintenance Of The *Status Quo*, In Which No RBOC Competes With Each Other, Much More Likely

Viewed in the context of the proposed Ameritech-SBC merger, the Bell Atlantic-GTE merger is particularly problematic. If consummated, these mergers not only would facilitate the unilateral exercise of market power discussed above, but would further make maintenance of the *status quo*, in which no RBOC competes with another in its home markets, much more likely. *Cf. Addyston Pipe & Steel Co. v. United States*, 175 U.S. 211 (1889) (holding such territorial divisions per se illegal under the Sherman Act). The merger, together with SBC's proposed

[27] The Commission's suggestion in the access charge reform proceeding that Applicants do not have an incentive to undertake a price squeeze because that strategy requires driving major IXCs from the market, *Price Cap Performance Review for Local Exchange Companies,* 12 FCC Rcd. 15,982, ¶ 281 (1997), is misplaced for three independent reasons. *First*, Applicants make clear in their filing that they intend to maintain and expand their retail market share by providing a bundle of local, long distance, and other services. Application at 2-8, 19. In order to offer a full range of services, they place a large premium on securing quick and substantial entry into the long distance market, which provides an incentive to undertake a price squeeze. *Second*, there may be a limited time period during which Applicants can secure large monopoly rents from access services. If regulators and/or alternate access drive down the cost of access, Applicants lose their ability to price squeeze. Accordingly, if allowed to provide long distance while access charges are still above cost—as is the case now—Applicants have the incentive to price squeeze in order to establish a presence in the long distance market that is vital to their strategies, enhances their ability to impede the development of access alternatives, and offers them better long-term profits and opportunities. *Third*, a price squeeze can be profitable on its own terms. That is because Applicants earn a profit on the long distance customers they capture as a result of the price squeeze *and* a price squeeze increases competitors usage of access facilities (because the price squeeze forces rivals to lower prices which in turn leads to more demand). Thus, Applicants can profit by engaging in a price squeeze even if they do not drive major IXCs out of the market.

merger with Ameritech, would create two super-RBOCs with each controlling about 35 percent of the nation's access lines. Given this market structure, it is highly unlikely that the two remaining "mini"-RBOCs (BellSouth Corp. ("BellSouth") and U S WEST Communications, Inc. ("U S WEST")) would break ranks and invite retaliatory entry by Bell Atlantic and SBC.

The possibility of collusive behavior is particularly strong where, as here, conditions are conducive to detecting deviations. The local exchange market is currently characterized by existing territorial divisions, high market concentrations, significant barriers to entry, economies of scale, history of non-competition, and easy detection of violations of the territorial divisions. *See* DOJ/FTC Horizontal Merger Guidelines § 2.12 (discussing in detail why these factors make collusion more probable); Richard Posner, *Antitrust Law: An Economic Perspective* 55-62 (1976) (same). The mergers would also make retaliation for violation of the existing territorial divisions a greater possibility. While both Bell Atlantic-GTE and Ameritech-SBC claim they will enter each other's territories post-merger, neither has made a firm commitment to do so or actually invested the necessary resources to make such entry likely in the near future. *See infra* Section III (demonstrating Bell Atlantic's failure to commit to an out-of-region entry strategy); Petition of AT&T Corp. to Deny Applications, CC Docket No. 98-141, at 35-37 (FCC Oct. 15, 1998) ("AT&T Pet. to Deny") (demonstrating SBC's failure to commit to an out-of-region entry strategy). In light of these facts, and given these RBOCs' historic refusal to compete with each other in core markets, these public statements about out-of-region competition are most properly viewed as "shots across the bow" that are intended to maintain the *status quo*.

For example, while post-merger SBC would be well poised to attack Bell Atlantic's most profitable market through its SNET territories, Bell Atlantic would likewise be well positioned to attack SBC in Los Angeles from GTE's Orange County territory. So while SBC may have incentive to enter the New York City metropolitan area, it knows that doing so would put its most lucrative market at risk to a significant competitor. Such "mutually assured destruction" scenarios greatly facilitate maintenance of the *status quo* in which both Bell Atlantic and SBC benefit by maintaining their monopolies.

It is also the case that this collusive behavior is likely to extend beyond just the existing territorial divisions, but to spill over into other markets as well, such as innovation markets where there is limited competition between the RBOCs. In the *BA-NYNEX Merger Order*, the Commission observed that "[r]esearch and development . . . is a means through which firms engage in non-price competition, by seeking means to differentiate products either in function or quality" and that "[e]limination of parallel research and development efforts would eliminate this form of non-price competition" and "reduc[e] output." *Bell Atlantic-NYNEX Merger Order* ¶ 171. Likewise, the federal antitrust authorities have stated that they will view firms with specialized research and development capabilities as competing in separate "innovation markets" and will block transactions that reduce competition in those market. *See, e.g.*, United States Department of Justice/Federal Trade Commission Antitrust Guidelines for the Licensing of Intellectual Property § 3.2.3, Example 4, *reprinted in* 4 Trade Reg. Rep. ¶ 13,132 (1995) ("DOJ/FTC Intellectual Property Guidelines") (citing cases).

Because of the high costs and expertise necessary, large incumbent LECs are often the only firms that engage in the research and/or development (or directly fund such research and development) of many advanced telecommunications technologies, especially the "field research" necessary to take a new technology from the lab to a real network. But after the merger, there will be only four other firms (BellSouth, U S WEST, Ameritech and SBC—the latter two of which have announced their intention to merge) that will be able to compete in these innovation markets. Such high concentrations in a field with such significant barriers to entry clearly facilitates the exercise of market power. *See* DOJ/FTC Intellectual Property Guidelines § 3.2.3, Example 4, (a joint venture eliminating such competition such that there are only three other independently controlled entities with similar capabilities and incentives would create significant risk of anticompetitive effects in the innovation market).

II. THE MERGER WOULD VIOLATE SECTION 271 OF THE ACT

The Application should be rejected for a second, independent reason: the proposed combination of Bell Atlantic with GTE, which offers interLATA services originating in Bell Atlantic's territory, flatly violates Section 271 of the Act. While Bell Atlantic and GTE describe in some detail the divestiture of cellular and PCS licenses they plan to make in order to bring the potential merged entity into compliance with Commission rules, *see* Public Interest Statement 4-5, the Application conspicuously makes no such commitment with respect to GTE's interLATA assets. Bell Atlantic apparently seeks to obtain through this merger the facilities in its region used by GTE to provide long distance services and "Internet backbone" services, and the business of providing services through those facilities, notwithstanding the fact that these are undoubtedly interLATA services that Bell Atlantic is not authorized to provide.

With regard to long distance services, Bell Atlantic acknowledges that the proposed merger would violate Section 271, but—in a brief footnote—notes that it will request the Commission to provide "transitional relief" from this central requirement of the Telecommunications Act (unless Bell Atlantic has obtained Section 271 authority prior to a decision on the Application). Because the statute denies the Commission any such authority—and because Applicants in any event do not even attempt to justify such extraordinary relief—the Commission cannot grant the Application.

With regard to GTE's interLATA internet backbone facilities, Applicants fail even to acknowledge that Bell Atlantic's proposed ownership of those facilities violates Section 271. Because the Commission has already properly rejected as beyond its statutory authority a request by Bell Atlantic to forbear from applying Section 271 so as to allow Bell Atlantic "to proceed with current plans to build a regional [Internet] backbone network,"[28] the Commission should reject the merger as plainly in violation of Section 271 in this respect as well.

A. Long Distance

As Applicants are well aware, Bell Atlantic has been forbidden from offering interLATA long distance services since the breakup of the Bell System in 1984. In Section 271 of the Act, Congress provided that once Bell Atlantic has been found to have opened its monopoly local markets to competition and otherwise complied with the pertinent requirements of the Act, it may offer in-region, interLATA services. To date, Bell Atlantic has not applied, and could not meet the test, for such authority pursuant to Section 271. Instead, it seeks through this merger to make an end run around Section 271, acquire GTE's long distance facilities, and use them to originate calls in Bell Atlantic's territory. Because that would be patently unlawful, the Commission must deny the applications.

Even though Section 271 is of central importance to the Act and this acquisition, Bell Atlantic confines its discussion of the proposed merger's violation of that section to a two-sentence footnote. *See* Public Interest Statement at 19 n.14. In the footnote, Bell Atlantic concedes that this aspect of the merger violates Section 271 but states that it "hopes to have

---

[28] Petition of Bell Atlantic Corp. for relief from Barriers to Deployment of Advanced Telecomm. Servs., CC Docket 98-11, at 4 (FCC Jan. 26, 1998) ("Petition of BA"); *See In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket 98-147 *et al.*, ¶ 69 n.136, (FCC Aug. 7, 1998) ("*Section 706 Order*") (denying request of Bell
(continued . . .)

needed Section 271 approvals by the time this merger closes. If that process is not complete, applicants will request any necessary transitional relief from the Commission." *Id.* This sentence essentially treats Section 271 as though it does not exist, and is patently insufficient to justify the plain violation of Section 271 that would occur if the proposed transaction were to go forward.

As an initial matter, there is no indication that Bell Atlantic is at all likely to obtain approval under Section 271 in all of the states for which it would be required.[29] To the contrary, it seems likely that any such approvals would occur only well after the Commission has otherwise completed review of this transaction. Bell Atlantic has not yet received approval for interLATA entry from any state commission, and Bell Atlantic must still overcome several obstacles before any such approval is likely. For example, in July of this year in Pennsylvania, an ALJ refused to find that Bell Atlantic's business services in Pennsylvania were subject to competition, let alone that it fully complied with the Act.[30] As just one significant hurdle that Bell Atlantic still must overcome in Pennsylvania, independent third party testing of Bell

---

(. . . continued)
Atlantic and other RBOCs to offer interLATA Internet backbone services).

[29] For that matter, Applicants fail to provide sufficient information regarding the long distance operations of GTE such that it can be determined in how many states Bell Atlantic must obtain approval under Section 271. Assuming that GTE is providing its long distance service at least in all of its local operating territories, Bell Atlantic would need to obtain relief, at a minimum, in Pennsylvania and in Virginia. More information would be needed before it could be determined which, if any, additional states are implicated.

[30] *See* Recommended Decision, *Petition of Bell Atlantic-Pennsylvania, Inc. For a Determination of Whether the Provision of Business Telecommunications Service is Competitive*, Docket P-00971307, at 4-5 (Pa. PUC July 24, 1998) (ALJ Michael C. Schnierle) ("PA ALJ Decision") (concluding that Bell Atlantic "has not come close to establishing the major fact that it must establish to prevail here, namely, that there is effective competition for business services throughout BA-PA's service territory such that BA-PA would be unable to sustain price increases for its services. BA-PA presentation on the issue of competitive presence does not withstand the most cursory review.") (App. G).

Atlantic's operations support systems ("OSS") is just now being planned there.[31] Given the importance of the proper functioning of those systems to competition and to the Commission's inquiry as to Section 271 checklist compliance, it does not seem likely that Bell Atlantic would even apply to obtain authority to operate long distance facilities—including those now owned by GTE—until those tests are successfully completed.[32] As for Virginia, the process there appears to be even further behind that in Pennsylvania.

Bell Atlantic's "hope[]" that it will nonetheless moot the issue by receiving all the necessary Section 271 authorizations prior to action on these applications is thus quite irrelevant, and in any event, exceedingly unlikely to be fulfilled. This is not the proceeding in which to catalogue the numerous respects in which Bell Atlantic presently falls short of satisfying the requirements of Section 271 in each of the relevant States. However, Bell Atlantic's assertion of hope is merely the latest in a rolling series of Bell Atlantic statements made since passage of the Act asserting the likelihood of an imminent and successful Section 271 application that never ultimately materializes.[33] Moreover, even if Bell Atlantic's latest such predictions prove true,

---

[31] *Cf. id.* at 44-46 (noting problems with OSS and the need for "permanent monitoring" of performance).

[32] Of course, numerous other hurdles remain before Section 271 relief is appropriate, including, for example, whether Bell Atlantic is providing access to combinations of unbundled network elements on reasonable and nondiscriminatory terms. Last year, the same Pennsylvania ALJ found that Bell Atlantic's proposed method of allowing new entrants to combine network elements made "no sense" and was "misguided." PA ALJ Decision at 27 (App. G).

[33] *See, e.g.*, Public Interest Statement, BA-NYNEX Merger, File No. NSD-L-96-10, at 7 (July 2, 1996) (stating that the applicants "expect to be permitted to offer in-region long distance service in some States soon, perhaps by the end of this year"); Mike Mills & Paul Farhi, *Is This A Free Market? The Telecommunications Act so Far: Higher Prices, Few Benefits*, The Washington Post, Jan. 19, 1997, at H1 (reporting that Bell Atlantic President Jim Cullen "said his company will file a [271] application for this region by April"); Timothy J. Mullaney, *Bell Atlantic Asks To Dial Long Distance*, The Baltimore Sun, March 15, 1997, at 15C (reporting that a Bell Atlantic filing is "expected to come in June or July," which "Bell Atlantic hopes will let it offer long distance service by this fall"); Letter of James A. Nappi, Secretary, New Jersey Board of
(continued . . .)

they would still be insufficient, for Bell Atlantic is now stating only that it "plans to seek FCC permission next year to offer long-distance service in Massachusetts and Pennsylvania [as well as New York]", making no mention, for example, of Virginia, where GTE apparently offers interLATA service.[34]

If Bell Atlantic has not obtained Section 271 relief by the time the Commission is ready to act on this Application, the Application must be denied on that ground alone. In addition, the Commission should reject Applicants' alternative suggestion that, if Section 271 relief has not been granted, Bell Atlantic could obtain "transitional relief" from Section 271. Nothing in the Act provides for any type of interim or transitional relief. To the contrary, the Act squarely forecloses such procedures. Section 10(d) of the Act, 47 U.S.C. § 160(d), provides that the "Commission may not forbear from applying the requirements of section 251(c) or 271 . . . until it determines that those requirements have been fully implemented." Applicants' concept of

---

(. . . continued)
Public Utilities to all Interested Parties, BPU Docket No. T097030166, at 1 (March 31, 1997) ("BA-NJ has indicated its intention is to file its application with the FCC to enter the in-region interLATA market by no later than April 30, 1997"); *Seidenberg Talks of Long-Distance, Regulatory Dreams*, Communications Today, Sept. 9, 1997 (in a news briefing, Bell Atlantic Vice Chairman Ivan Seidenberg "said he anticipates that by the end of the year Bell Atlantic will file a Section 271 application with the FCC for New York, as well as a second state, such as Maryland or Pennsylvania . . . . Seidenberg said he anticipates the company's first approval to provide long-distance service will come sometime in the spring of 1998"); Andrew Brooks, *Bell Atlantic Wants Long Distance*, The Times Union (Albany, NY), Nov. 7, 1997, at E1 (reporting that Bell Atlantic in New York "hopes to get approval from the FCC as soon [as] January 1998" and that James Cullen of Bell Atlantic "said the company expects to file applications in other states in the next three to four months and in every state in its Maine-to-Virginia region by the end of first quarter of 1999"); David Troester, *Competition Heating Up In Long-Distance Market*, Business First of Buffalo, March 9, 1998, at 13 (reporting that Bell Atlantic "plans to file an application this spring with the [FCC] to offer long-distance"); Rose-Robin Pedone, *Deregulation Sparks Savings, Innovation*, LI Business News, Apr. 27, 1998, at 27 ("Bell [Atlantic] will now file an application with the [FCC] by the fourth quarter").

[34] *See* Ronald Rosenberg, "AT&T's Chairman Armstrong Hits Bell Atlantic Claims, Disputes
(continued . . .)

transitional relief would apparently entail a limited form of relief while (or before) Bell Atlantic applies for full approval under Section 271, but the plain text of the Act precludes any sort of relief until the Commission finds that the checklist is "fully implemented" and the other relevant requirements of that provision fully satisfied. 47 U.S.C. § 271(d)(3)(A)(i).

B. Internet Backbone Services

The Application is entirely devoid of any specific acknowledgement that the proposed merger violates Section 271 in a second respect: under the proposed transaction, Bell Atlantic seeks to acquire and operate in its region GTE's interLATA internet backbone facilities. As with GTE's long distance facilities, Bell Atlantic is precluded by Section 271 from owning or operating these facilities, and accordingly the merger must be denied for this reason as well.

Internet backbone facilities are used to route Internet traffic between Internet Service Providers ("ISPs") and to interconnect with other Internet Backbone Providers ("IBPs"). *MCI-WorldCom Order* ¶ 143. The facilities consist of "routers connected together by high-speed data lines," *id.* ¶ 143 n.383, and are interconnected at various network access points ("NAPs"). "The essential service provided by IBPs is transmission of information between all users of the Internet," *id.* ¶ 144, and because those users are typically scattered throughout the country and even the world, IBPs necessarily are providing an interLATA service. *See id.* ¶ 148 ("These Internet backbone services can ensure the delivery of information from any source to any destination on the Internet").

GTE is an IBP with facilities throughout the United States, and several of its backbone facilities appear to be located within Bell Atlantic's territory, including several points of

(. . . continued)
Claims of Opening Local Market," Boston Globe, Nov. 6, 1998, at C2.

presence ("POPs") in Bell Atlantic territories, such as Boston, Cambridge, MA, New York City, Philadelphia, Baltimore, Washington, Vienna, and Richmond. *See* GTE Internetworking, Map of Network Backbone as of Q398, United States, available at www.bbn.com (dated 7/98). These POPs are linked via high speed data links to sites across the country and the world, including Atlanta, Chicago, Oakland, San Jose, and Palo Alto. *Id.* GTE Internetworking, GTE's IBP subsidiary, also has announced plans to further expand these facilities, including additional points of presence to be located in Bell Atlantic's territory in Providence, Rochester, Albany, Newark, and Pittsburgh. *See* GTE Internetworking, Map of Network Backbone as of Year End 1999, available at www.bbn.com (dated 7/98).

Because GTE's Internet backbone facilities provide interLATA services, are located in part in Bell Atlantic's territories, and presumably carry some interLATA traffic that originate in those territories, Bell Atlantic's proposed acquisition of these facilities and provision of those services violates Section 271. *See* 47 U.S.C. §§ 153(42), 271 (defining "interLATA services" and prohibiting RBOC provision of in-region, interLATA services). Indeed, both GTE and Bell Atlantic have conceded that Section 271 prohibits RBOCs from owning and operating Internet backbone facilities. In commenting on the market for Internet backbone services in the WorldCom/MCI merger proceedings, GTE stated that "[p]otential new entrants include AT&T and the Bell operating companies. The latter, however, will require significant regulatory relief to enter this market, and the prospects for such relief in the near term remain uncertain." Comments of GTE Serv. Corp. on WorldCom/MCI's Joint Reply to Petitions to Deny and Comments, CC Docket 97-211, at 73 (FCC March 13, 1998). Bell Atlantic's President, Ivan

Seidenberg, likewise admitted that "under current regulation . . . Bell Atlantic is prohibited from making the investments in [Internet] backbone networks."[35]

Indeed, Bell Atlantic effectively conceded—as it had to—that Section 271 precludes it from owning Internet backbone facilities when it filed a petition with the Commission asking it to forbear from enforcing Section 271 against any Internet backbone facilities it sought to provide and operate. *See* Petition of BA at 3 (requesting, among other things, that the Commission "permit Bell Atlantic to provide high-speed broadband services," including Internet backbone services, "without regard to present LATA boundaries"). The Commission denied Bell Atlantic's request, and found that "because of the central importance of the requirements in Sections 251(c) and 271 to opening local markets to competition," those sections are the "cornerstones of the framework Congress established in the 1996 Act." *Section 706 Order* ¶ 76. Accordingly, the Commission found that it must apply Section 271 consistently with its terms and refuse to allow Bell Atlantic and other RBOCs to own and offer interLATA, Internet backbone facilities. *Id.* ¶¶ 65-82.

Thus, the plain terms of the Act, Applicants' own concessions, and the Commission's prior decision confirm that Bell Atlantic's proposed acquisition of GTE's Internet backbone facilities and provision of services through those facilities would violate Section 271. As with Bell Atlantic's proposed acquisition of GTE's other long distance facilities, there is no basis to conclude either that Bell Atlantic will secure the necessary relief before the Commission acts in this case or that the Act enables Bell Atlantic to obtain for some sort of transitional or interim relief from Section 271. Thus, the Commission should deny the merger.

---

[35] *See* Ivan Seidenberg, *Telecommunications Act Is Doing The Job*, The Times Union (Albany, NY), Feb. 28, 1998, at A7.

III. THE PROPOSED MERGER WOULD PRODUCE NO COUNTERVAILING PRO-CONSUMER BENEFITS

Applicants' recitation of purported pro-competitive benefits of the merger cannot remotely justify a finding that this merger would serve the public interest. To begin with, unless Bell Atlantic receives the requisite Section 271 approvals first, the claims of pro-competitive benefits are wholly irrelevant. *See supra* Section II. While the Commission may balance pro-competitive benefits against anticompetitive harms in determining whether an otherwise lawful merger is in the public interest, it cannot approve a merger that violates the Act because of alleged other benefits. In such instances, Congress has already made the definitive determination of where the public interest lies.

In all events, however, even if Bell Atlantic were first to receive the necessary Section 271 authorizations (or GTE were to divest its long distance and Internet backbone operations), thus eliminating that obstacle, the other anticompetitive effects of this transaction are so significant and profound that it is difficult to imagine any countervailing benefits that could possibly outweigh the harmful effects of the transaction. *See supra* Section I. Applicants' principal claimed benefit—that the merger will finally fulfill the Act's promise of vigorous local competition—falls well short of satisfying this burden. Even though over two and half years have passed since the Act removed the entry barriers that precluded the incumbent LECs from entering and competing in each other's territory, and even though two other RBOC mergers have not yet produced any sustained effort by an RBOC to invade the others' local bottlenecks, Applicants would have this Commission conclude that the approval of "this merger will *finally* enable one of the Bell Companies to attack the local markets of the other Bells." Public Interest Statement at 1 (emphasis added). Given the incumbent LECs' unanimous defiance of their market-opening obligations under the Act and their historic unwillingness to compete against one another, there is significant reason to doubt that the state of local competition can be "instantly," *id.*, improved merely by approval this merger. Indeed, a comparison of the Application and Applicants' public statements makes clear that Applicants have made no commitment to upset the *status quo* by competing with other RBOCs.

A. Applicants Have Made No Commitment To Enter Out-Of-Region Local Markets

Applicants' proposed out-of-region local entry strategy cannot be squared with the public statements made by their Chairmen immediately prior to and following the merger announcement. First, as recently as February, 1998, in GTE's annual report—which is issued under penalty of the federal securities laws—GTE's Chairman made clear that its out-of-region entry was not in the slightest dependent on a merger. He stated that GTE "must have a national presence," and therefore had "launched GTE Communications Corporation, a competitive local exchange carrier that will market the full spectrum of GTE services in key markets, *without regard to franchise boundaries*." GTE 1997 Annual Report at 2 (Statement of Charles R. Lee) (emphasis added). He further stated that "[w]e're confident about GTE's ability to succeed in the competitive marketplace *without* entering into a major transaction or combination with another company. In other words, we can go it alone and win." *Id.* at 3 (emphasis in original). But at a press conference held to announce the merger, Applicants' Chairmen failed to respond to three separate questions regarding whether the merged company would commit to entering out-of-region markets and instead indicated that the company intended to focus in-region.[36] Hence, if anything, Applicants' enthusiasm for out-of-region entry has *lessened* since the merger.

[36] *See* Bell Atlantic-GTE Press Conference (July 28, 1998) ("Our key focus . . . will be capitalizing on opportunities where we already have places."); *id.* ("Priority is our current activities, our current franchises. . . . We will also . . . continue to look for opportunities outside
(continued . . .)

Moreover, Applicants' bare assertions regarding their entry plans are entirely unsupported by any evidence of a firm entry commitment and lack the critical detail that the Commission requires to evaluate the purported benefits of entry.[37] Indeed, Applicants go out of their way to avoid making any commitment to this Commission to enter out-of-region markets. Applicants devote only a few terse sentences of their Application to describing these plans, Public Interest Statement at 6-7; Kissell Decl. ¶ 14, and make no pledge to this Commission regarding those plans.[38] Notably, they have submitted *no* sworn testimony detailing their entry strategy. Rather, the only indication of their entry plans that Applicants provide is their reference (which itself lacks citation) that "GTE's chairman recently testified to Congress that the combined company plans to enter at least 21 [out-of-region] markets." Public Interest Statement at 6. *See also* Kissel Decl. ¶¶ 7, 14.[39]

(. . . continued)
our franchise. We will do so only on an economic basis and those economics are still taking shape as we go forward.").

[37] Applicants' discussion of telecommunications stock prices in the wake of their merger announcement, Hazlett Decl. ¶¶ 3-6, also provides no support for their claim. The Commission has once before brushed aside such evidence, *see MCI-WorldCom Order*, ¶ 36 n.98, and it should do so again here. As Professors Mayo and Kaserman explain, Applicants' "event study," if anything, supports the hypothesis that the market participants recognized that the merger would only exacerbate Applicants' existing market power, leading to even more supra- and anti-competitive profits for Applicants' shareholders—a result plainly not in the public interest. *See* Mayo/Kasserman Aff. ¶¶ 55-58 (App. A).

[38] *Cf.* Letter of Senators DeWine, Kohl, Leahy, and Thurmond to Chairman Kennard (Sept. 16, 1998), at 1 (emphasizing the need for the Commission to develop mechanisms for "guarantee[ing] that competitive promises of the merging parties are kept").

[39] Applicants' so-called pledge of entry provides yet another instance of their manipulation of the term "plans." In this context, Applicants attempt to convince the Commission of the competitive benefits of the merger by referring to purportedly firm "plans" to enter out-of-region local markets. *See* Public Interest Statement at 6; Kissell Decl. ¶¶ 7, 14. However, when they attempt to convince the Commission that Bell Atlantic had no "plans" to enter GTE's markets, Applicants refuse to characterize as "plans" either its "pursu[it of] . . . opportunities" to serve customers at Dulles Airport or its "discuss[ions] with Cox Communications" to partner and serve
(continued . . .)

Applicants' complete failure to provide any details regarding their out-of-region entry plans starkly contrasts with what GTE has demanded in the past of merger applicants to evaluate assertions that a merger will benefit consumers.[40] For example, in the MCI-WorldCom proceeding, GTE stridently criticized MCI and WorldCom for providing an application that was "devoid of facts and uncorroborated by documentation," and that "lack[ed] any detailed description" of their claims that their merger would allow them to compete more effectively in the local markets against the RBOCs. *See* GTE Petition to Deny at iii, 42-45. GTE specifically demanded that

> the Commission should, at a minimum, require applicants to specify in detail (1) all of the local markets in which each company was planning to construct facilities; (2) when construction began; (3) the proposed construction time periods; (4) the extent to which and when each company has or will terminate their existing construction plans as a result of this merger; and (5) the exact routes of each company's existing and planned network.

Id. at 44 & n.91. GTE also argued that the Commission should demand proof of such "competitive claims" to be made by "documentary and other evidence" that must in part "have been in existence prior to the announced merger." *Id.*

Ignoring GTE's own prior demands for "facts," "detail[s]" and "documenta[tion]," Applicants here provide the Commission with virtually no information about their out-of-region entry strategy. For example, Applicants fail to discuss—and certainly do not document—the types of facilities they will use in their out-of-region entry, *i.e.*, whether they will construct their

(. . . continued)
customers in Virginia Beach. *See* Public Interest Statement at 32-33 n.30 (stating that this conduct does not equal "making any plans").

[40] In this regard, Applicants' post-merger out-of-region entry plans are even less definite than the plans announced by Ameritech-SBC, which themselves were lacking in detail, equivocal, and insufficiently pro-competitive when weighed against the anticompetitive effects of the merger. *See* AT&T Pet. to Deny at 33-38.

own facilities or simply use those of incumbents. Nor do they provide any indication of the types of customers they will target. And they certainly do not disclose the "exact routes of each company's existing and planned network." GTE Pet. To Deny at 44 n.91. Because Applicants have not made a specific commitment to this Commission to enter out-of-region local markets—let alone provided the detail necessary to evaluate the benefits of that entry—the Commission should summarily disregard Applicants' claims, contrived for purposes of this application, that the proposed merger will allow them to compete out-of-region on a "widespread and effective basis." Public Interest Statement at 1.

B. Applicants Need Not Merge To Become Viable Out-Of-Region Competitors

Although consumers could benefit if incumbent LECs would begin implementing out-of-region entry plans to help break their counterparts' monopoly control of local phone markets, Applicants were already well-positioned to do so before the merger. Applicants do not need to merge to enter out-of-region local markets, but only to rid themselves of their long-standing distaste for head-to-head competition against other incumbent LECs. As Commissioner Tristani has noted, Applicants in proceedings such as these "must show us they simply can't compete out-of-region in a meaningful way without acquiring [the other]. I look forward to hearing their explanations."[41]

No such explanation exists in the case of this proposed merger. It simply is ludicrous to believe that Applicants must control 35 percent of the access lines in the United States to compete with other local carriers. *See also* Remarks of Commissioner Ness at 5 ("I have yet to be convinced that the only way we can ever get large incumbent telephone companies to

---

[41] "Mergers, Consumers, and the FCC," Remarks of Commissioner Gloria Tristani before the National Association of Regulatory Utility Commissioners, at 6 (Nov. 8, 1998) ("Remarks of (continued . . .)

compete against other large incumbent local telephone companies is if they all first reach some gargantuan threshold of size. This is not sumo wrestling."); Remarks of Commissioner Tristani at 6 ("In all candor, I'm a little skeptical of the notion that a $25 billion dollar company needs to get bigger before it can compete successfully out-of-region").[42] The dubious nature of Applicants' claims that they can compete only by merging is further exposed by their additional assertions that, in their own territories, they are subject to effective competition by new entrants that are a fraction of Applicants' current size. Viewed in this light, Applicants' generalized claims that a merger is required for effective out-of-region entry are at best questionable. Applicants advance three specific reasons why a merger might make them more effective out-of-region competitors, *see* Public Interest Statement at 7 & Kissell Decl. ¶ 5, but any careful examination reveals that all three are specious and that each Applicant could effectively compete out-of-region on its own.

1. Capital Investment

First, Applicants assert that they require "substantial investments" to obtain the facilities necessary to offer out-of-region local services. Public Interest Statement at 7; Kissell Decl. ¶¶ 5, 9, 12. As the attached affidavit of Dr. Stephen Levinson ("Levinson Aff.") shows, however, both GTE and Bell Atlantic are already easily large enough to attract the necessary capital to fund their out-of-region entry. Levinson Aff. ¶¶ 2-12 (App. H). As Dr. Levinson discusses,

---

(. . . continued)
Commissioner Tristani").

[42] Given Bell Atlantic's existing size, the claims—even if entirely true—that the merged company would enter 20 out-of-region markets is less than impressive. AT&T Pet. to Deny at 41 (citing admissions). By comparison, in its merger application with Ameritech, SBC *admitted* that, as it existed before its proposed merger, it could enter 15 out-of-region markets. Bell Atlantic, which was already large and which grew in size by virtue of its merger with NYNEX, is a much larger company than SBC, and therefore should be able to enter on its own at least that
(continued . . .)

several competitive LECs—all of which are much smaller than either Bell Atlantic or GTE—have been able to obtain necessary capital for their entry into local markets. Given these competitive LECs' experience, it is highly improbable that GTE or Bell Atlantic cannot raise enough capital to enter out-of-region markets without merging with one another.[43] Of course, as explained above, the problem with competing against an incumbent LEC is not access to capital but instead that incumbent LECs have successfully thwarted the market-opening requirements of the Act—a fact that this merger will do nothing to change.

2. Proximate Facilities

Applicants' second type of merger benefit—that Bell Atlantic will gain "proximate facilities" from GTE that enable it to enter out-of-region local markets, Public Interest Statement at 1, 7; Kissell Decl. ¶ 8—must also be treated with extreme skepticism, for two reasons. *First*, in the Bell Atlantic-NYNEX merger proceeding, Bell Atlantic claimed that its facilities in northern New Jersey did not allow it to enter into NYNEX's lucrative New York City market. *See* Public Interest Statement, Bell Atlantic-NYNEX, Tracking No. 96-0221, at 18-19 (FCC July 2, 1996) (claiming that Bell Atlantic and NYNEX could not compete with one another, and actually "are at a disadvantage relative to others," even though they "have facilities across the Hudson River from each other in the New York City area. . . . [S]witching facilities at a remove of several miles across a river—as opposed to directly on-site . . . offer Bell Atlantic and

(. . . continued)
many markets.

[43] Once again, Applicants' failure to present firm evidence to support their claims that they are unable to raise needed capital contradicts GTE's previous arguments in the MCI-WorldCom merger proceeding, where GTE argued that the Commission should disregard the claimed pro-competitive benefits of that merger because the applicants had not "proved that [they] individually cannot attract sufficient capital to be an aggressive local competitor." GTE Pet. To Deny at 45.

NYNEX *no particular advantage* for serving high density traffic.") (emphasis added); Declaration of Nancy Sayer, Tracking No. 96-0221, ¶ 5 (FCC Oct. 23, 1996) ("The presence of Bell Atlantic facilities in New Jersey is *irrelevant* to any rationally efficient and reasonably priced proposal to provide competitive local exchange facilities in the NYNEX region.") (emphasis added). By contrast, in this application Bell Atlantic now lists as proximate facilities that enable its out-of-region entry GTE's facilities in "neighboring suburbs" of such cities as Indianapolis, Orlando, Jacksonville and Portland. Public Interest Statement at 1-2.

Second, Applicants' claims that "truly proximate facilities" are "require[d]" for economical local entry, *id.* at 7, are contradicted by their assertions that Applicants could not enter each other's territory, even though they already own proximate facilities in several key areas. *Id.* at 29-33; Kissell Decl. ¶ 15. Based on Applicants' own contradictory statements, there is little reason for the Commission to have confidence either that proximate facilities are "*required*" for entry or that Applicants have the ability to identify and to use efficiently any such proximate facilities. Rather, while proximate facilities can certainly help facilitate entry, Congress in the Act mandated that incumbent LECs allow entrants to purchase access to their network elements in order to allow entry regardless of ownership of proximate facilities. Of course, as explained above in Section II, to the extent Applicants' have been successful in making this entry vehicle unattractive, it cannot be used as a reason to justify this merger.

3. Anchor Tenants/Brand Recognition

Applicants' final claim is that only through a merger can the companies attract "anchor" customers or develop a national brand to exploit. Public Interest Statement at 7; Kissel Decl. ¶ 7. Again, the Commission should not put much faith in the claims of large "global," Application at 3, companies that they do not have strong brands. Both GTE and Bell Atlantic have strong brands. Indeed, GTE already does national advertising. Moreover, both companies have sufficient brands to enable them to develop extensive wireless presences throughout the country, and other services throughout the world. And each Applicant's brand is certainly well known by the large "anchor" tenants they claim they need to succeed. Accordingly, the Commission should reject Applicants' claims that their present brand is insufficient to allow them to compete.

In sum, Applicants' efforts to portray themselves as ineffective out-of-region competitors simply is not consistent with the facts. Each Applicant currently has extensive experience with local telephone markets, is easily large enough already to raise the funds needed for their relatively modest out-of-region strategy, and therefore could be competing effectively today.

IV. BELL ATLANTIC'S RESPONSE TO THE MERGER COMMITMENTS IMPOSED BY THE COMMISSION IN CONNECTION WITH ITS ACQUISITION OF NYNEX PRECLUDES APPROVAL OF THIS APPLICATION

Finally, and in all events, no set of conditions can transform this otherwise anticompetitive combination into one that serves the public interest. Bell Atlantic's extraordinary response to the conditions imposed in the Bell Atlantic–NYNEX merger proceeding has made plain that it believes that the Commission has no authority to enforce any such conditions and that it will simply ignore any condition imposed in this proceeding that might subject its monopoly to effective competition.

More specifically, in the Bell Atlantic-NYNEX merger proceeding the Commission recognized that the proposed transaction substantially increased the likelihood that the merged entity would "increase prices, reduce quality or restrict output." *BA-NYNEX Merger Order* ¶ 11. Accordingly, the Commission imposed a number of conditions that it found were *essential* to "mitigat[e] . . . the competitive harms that we otherwise foresee," and that then enabled the

Commission to make a finding that, on balance, the merger would serve the public interest. *Id.* ¶ 14. Of particular importance in the prior proceeding were the "pricing and non-recurring charge conditions" that required Bell Atlantic to make available access to its network facilities to new entrants at rates based on "forward-looking, economic costs." *Id.* ¶ 185. The Commission determined that these conditions would lower barriers to entry, *id.* ¶¶ 14, 195, and check the exercise of market power by Bell Atlantic, *id.* ¶¶ 14, 192.

Bell Atlantic, however, from day one treated these conditions as both substantively meaningless and procedurally unenforceable. Rather than revise its network element and interconnection rates to bring them into conformance with the merger conditions, or even engage in negotiations with new entrants on the issue, Bell Atlantic continued to advocate the exact *same* rates as it had prior to the merger and, indeed, even sought to overturn decisions by the few state commissions that recognized Bell Atlantic's network element rates for what they really were—attempts to recover embedded, backwards-looking costs and preclude competition on the merits.[44]

The result is that, for this and other reasons, two years after consummating its merger with NYNEX, Bell Atlantic continues to enjoy a monopoly in its territory from Virginia to Maine, *MCI-WorldCom Merger Order* ¶ 158, and consumers continue to be denied the benefits of the competition intended by the Act. Moreover, Bell Atlantic's massive resistance to the forward-looking, economic cost pricing standard continues to embroil new entrants in costly and

[44] Complaint of AT&T Corp., File No. E-98-05, ¶¶ 19-27, 79-82 (FCC Nov. 16, 1997) ("AT&T Merger Complaint"); Opening Brief of AT&T Corp. in Support of Complaint, File No. E-98-05, at 44-48 (FCC March 13, 1998) ("AT&T Complaint Op. Br."); Affidavit of John Langhauser ¶¶ 7-24 (AT&T Complaint Op. Br., App. C); Reply Brief of AT&T Corp. in Support of Complaint, File No. E-98-05, at 27-30 (FCC Apr. 1, 1998) ("AT&T Complaint Reply. Br.").

time-consuming litigation in every state served by the pre-merger Bell Atlantic—the very thing that the merger conditions were designed to avoid. AT&T Complaint Reply Br. at 5.

Thus, while the merger conditions were intended to break down barriers to entry, the result was the opposite. AT&T and MCI were forced to file complaints with the Commission to obtain Bell Atlantic's compliance with the very same conditions Bell Atlantic had supposedly already committed to obeying. Bell Atlantic's response, moreover, showed that it considered these conditions to be a mere "dead letter." Opening Brief of Bell Atlantic Corp., File No. E-98-05, at 4 (FCC March 13, 1998) ("BA Complaint Op. Br."). According to Bell Atlantic, the complaints should be dismissed because the Commission lacks *any* authority to adjudicate whether Bell Atlantic had in fact complied with the merger conditions.[45] This is manifest nonsense. Sections 214, 303 and 310 of the Communications Act of 1934, 47 U.S.C. §§ 214, 303, 310, expressly authorize the Commission to determine whether proposed mergers are in the "public interest." The courts have repeatedly upheld the Commission's right—indeed, its duty—to impose protective conditions aimed at mitigating the potential anticompetitive effects of a merger. *BA-NYNEX Merger Order* ¶¶ 31-32, 35 (citing cases). Whether Bell Atlantic has met its obligations to this Commission under the 1934 Act is a matter that only the Commission can decide. Bell Atlantic's motion to the Commission to dismiss AT&T's and MCI's complaints on this ground amounted to little more than an invitation to the Commission to betray its promise, embodied in the merger pricing conditions, to ensure the development of effective competition in spite of Bell Atlantic's market power.[46]

---

[45] Motion to Dismiss of Bell Atlantic Corp., File No. E-98-05, at 9-12 (FCC Dec. 15, 1997) ("BA Mot. to Dismiss"); BA Complaint Op. Br. at 7-10.

[46] *See generally* Opposition of AT&T Corp. to Motion to Dismiss, File No. E-98-05, at 8-18 (FCC Dec. 29, 1997) ("AT&T Opp. to Mot. to Dismiss"); AT&T Complaint Op. Br. at 4-5;

(continued . . .)

In sum, Bell Atlantic has treated the merger conditions—and the public interest that they are designed to protect—as mere inconveniences to be ignored. But having done so Bell Atlantic has demonstrated that such conditions cannot be counted on to constrain its market power. And because, as explained above, the Bell Atlantic-GTE merger is even more anticompetitive than the Bell Atlantic-NYNEX merger—foreclosing not only local competition, but also competition in the long distance and data services markets as well—the Application must be denied outright.

(. . . continued)
AT&T Complaint Reply Br. at 4-6.

CONCLUSION

For the reasons stated above, the Application to transfer licenses should be denied.

David W. Carpenter CFB

Mark C. Rosenblum
Aryeh S. Friedman
295 North Maple Ave.
Basking Ridge, NJ 07920
(908) 221-2717

David W. Carpenter
Peter D. Keisler
C. Frederick Beckner III
Michael J. Hunseder
SIDLEY & AUSTIN
Chicago, IL 60604
(312) 853-7237

Attorneys for AT&T Corp.

November 23, 1998

CERTIFICATE OF SERVICE

I, Anisha Anne Abrol, do hereby certify that, on this 23th day of November, 1998, I served a copy of the attached document via hand delivery on the following parties:

Magalie Roman Salas
Secretary
FEDERAL COMMUNICATIONS COMMISSION
1919 M Street, NW
Room 222
Washington, DC 20554

ITS
1231 20th Street, NW
Washington, DC 20036

Chief
INTERNATIONAL BUREAU
2000 M Street, NW
Room 800
Washington, DC 20554

Jeanine Poltronieri
WIRELESS TELECOMMUNICATIONS BUREAU
2025 M Street, NW
Room 5002
Washington, DC 20554

Chief
Commercial Wireless Division
2100 M Street, NW
Room 7023
Washington, DC 20554

Janice Myles
Policy and Planning Division
COMMON CARRIER BUREAU
1919 M Street, NW
Room 544
Washington, DC 20554

Michael Kende
Policy and Planning Division
COMMON CARRIER BUREAU
1919 M Street, NW
Room 544
Washington, DC 20554

To-Quyen Truong
Policy and Planning Division
COMMON CARRIER BUREAU
1919 M Street, NW
Room 544
Washington, DC 20554

William P. Barr *
GTE CORP.
One Stamford Forum
Stamford, CT 06904

James R. Young *
BELL ATLANTIC CORP.
1095 Avenue of the Americas
New York, NY 10036

Anisha Anne Abrol

*via federal express

Before the
Federal Communications Commission
Washington, DC 20554

RECEIVED

NOV 23 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter	)	
	)	
GTE CORP.	)	
	)	
Transferor,	)	
	)	
and	)	CC Docket No. 98-184
	)	
BELL ATLANTIC CORP.	)	
	)	
Transferee,	)	
	)	
For Consent to Transfer of Control	)	

**APPENDIX TO
PETITION OF AT&T CORP. TO DENY APPLICATION**

Mark C. Rosenblum
Aryeh S. Friedman
295 North Maple Ave.
Basking Ridge, NJ 07920
(908) 221-2717

David W. Carpenter
Peter D. Keisler
C. Frederick Beckner III
Michael J. Hunseder
SIDLEY & AUSTIN
Chicago, IL 60604
(312) 853-7237

Attorneys for AT&T Corp.

November 23, 1998

TABLE OF CONTENTS TO APPENDIX